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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,114	11/13/2003	Robert J. Yarka	1391/1561	7674

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
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1761

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/712,114
Filing Date: November 13, 2003
Appellant(s): YATKA ET AL.

MAILED

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GROUP 1700

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 20, 2006 appealing from the Office
action mailed November 3, 2005

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

5,460,668	Nofre et al	1-1996
4,997,659	Yatka et al	3-1991
5,510,508	Nofre et al	4-1996
4,374,858	Glass et al	2-1983

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 6, 11, 24-27, 30 and 31 stand rejected under 35 U.S.C. 103(a). This rejection is fully set forth in prior Office action, Paper No. 081104, paragraph no. 7. Further, appellant's claimed panning procedure is well known according to Yatka et al (Abstract).

Claims 6, 11, 24-27, 30 and 31 also stand rejected under 35 U.S.C. 103(a). This rejection is fully set forth in prior Office action, Paper No. 070505, paragraph no. 4. Further, appellant's claimed panning procedure is well known according to Yatka et al (Abstract).

(10) Response to Argument

Since Nofre et al ('668) uses alitame and an aspartame derivative together in chewing gum (see appellant's claims 6 and 11, where alitame is recited) and since Yatka et al suggests applying aspartame as part of a rolling compound or as part of a coating to chewing gum it thus becomes obvious to apply to chewing gum any sweetener mixture, which includes alitame, in the manner disclosed in Yatka et al, i.e. by a panning procedure, or by a coating procedure on a gum pellet. There is no disclosed reason to separate the alitame from the aspartame derivative in Nofre et al

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('668) and apply them separately to chewing gum by two different techniques, e.g. coat with alitame and mix with an aspartame derivative. Further, although Yotka et al does not disclose the use of sweeteners, other than alitame, as part of a rolling compound or coating on chewing gum, as appellant contends, the fact that Yotka et al suggests using a well known sweetener in such a manner would lead the skilled artisan to conclude that it would have been obvious to use appellant's claimed and well known coating concept with other conventional chewing gum sweeteners. Appellant's conclusion that the use of one sweetener in a particular manner does not mean that it would have been obvious to use other sweeteners accordingly, is without merit. Otherwise, appellant would have us believe that every time a different but similar sweetener is used in appellant's process, such a process would be patentable. This would clearly not be a convincing argument.

Appellant's remarks with regard to Glass et al are also not convincing. Glass et al applies aspartame itself to chewing gum as part of a rolling compound. Aspartame is similar in some of properties to and closely related chemically to appellant's claimed N-substituted aspartame derivative, as appellant admits on page 10 of the brief, thereby rendering it obvious to apply either type of aspartame to chewing gum in the same manner regardless of the reason for doing so. The fact that neotame, an N-substituted aspartame derivative, is 30-60 times sweeter than aspartame according to page 10 of appellant's brief, and would be used in foods at much lower concentrations than aspartame, is totally expected due to the increased sweetness intensity thereof.

For the above reasons, it is believed that the rejections should be sustained.

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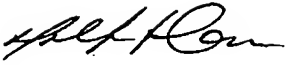
Respectfully submitted,


Arthur L. Corbin

Conferees:

Milton Cano

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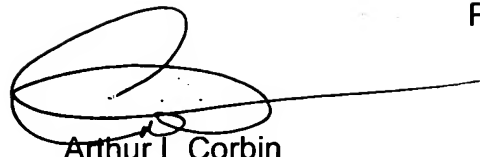
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Arthur L Corbin
Primary Examiner
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